

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554  
DEC 28 2 28 PM '93

MM Docket No. 93-314

In the Matter of

Amendment of Section 73.202(b), RM-8396  
Table of Allotments,  
FM Broadcast Stations.  
(Cadiz and Oak Grove, Kentucky)

## NOTICE OF PROPOSED RULE MAKING

Adopted: December 3, 1993; Released: December 28, 1993

By the Acting Chief, Allocations Branch:

Comment Date: February 18, 1994

Reply Comment Date: March 4, 1994

1. Before the Commission for consideration is a petition for rule making filed by Ham Broadcasting, Inc. ("petitioner"), licensee of Station WKDZ(FM), Channel 292A, Cadiz, Kentucky, requesting the substitution of Channel 293C3 for Channel 292A at Cadiz, Kentucky, the reallocation of Channel 293C3 from Cadiz to Oak Grove, Kentucky, and the modification of Station WKDZ's license to specify Oak Grove as its community of license.<sup>1</sup> Petitioner states that it will apply for the channel, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of licensee without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to Oak Grove is mutually exclusive with the existing allotment of Channel 292A at Cadiz. Petitioner also states that Oak Grove is an incorporated community, listed in the 1990 U.S. Census with a population of 2,864 persons,<sup>2</sup> has its own mayor, city government, police force, fire department, chamber of commerce, numerous churches, civic organizations and approximately 160 business establishments. Petitioner notes that the reallocation of Channel 293C3 from Cadiz (population 2,148) to Oak Grove would provide Oak Grove with its first local transmission service, and would

not deprive Cadiz of its sole local aural transmission service.<sup>3</sup> Petitioner further notes that Oak Grove is not located in an urbanized area.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. We note that Oak Grove is located within the Clarksville, Tennessee-Kentucky, urbanized area. We question whether Oak Grove should be credited with all of the aural services licensed to the Clarksville, Tennessee-Kentucky Urbanized Area. In addition, petitioner does not describe the loss or gain area or the number of reception services that currently serve the gain and loss area or whether the gain and loss area will include any underserved areas. Petitioner is requested to submit information sufficient to address these issues. See *Change of Community MO&O, supra*.

4. We believe the public interest could be served by proposing the substitution of Channel 293C3 for Channel 292A and the reallocation of Channel 293C3 from Cadiz to Oak Grove since it could provide Oak Grove with its first local transmission service and enable Station WKDZ(FM) to expand its service area. Channel 293C3 can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) north to accommodate petitioner's desired transmitter site.<sup>4</sup>

5. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Cadiz, Kentucky	292A	--
Oak Grove, Kentucky	--	293C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before February 18, 1994, and reply comments on or before March 4, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

<sup>1</sup> On November 1, 1991, petitioner filed a petition for rule making requesting the substitution of Channel 293C3 for Channel 292A at Cadiz, Kentucky, that petition was returned by letter as unacceptable on February 3, 1992. On March 4, 1992, petitioner filed an Application for Review directed against that action. On September 14, 1993, petitioner filed an amendment to the petition for rule making ("amendment"). As requested by

petitioner in its amendment, we will dismiss the Application for Review, and process the amendment as a petition for rule making.

<sup>2</sup> Population figures are taken the 1990 U.S. Census.

<sup>3</sup> Cadiz is also served by Station WKDZ(AM).

<sup>4</sup> The coordinates for Channel 293C3 at Oak Grove are North Latitude 36-45-05 and West Longitude 87-27-02.

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8. IT IS ORDERED, That the aforementioned Application for Review filed March 4, 1992, by Ham Broadcasting, Inc. IS DISMISSED.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John Karousos  
 Acting Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.